FILED
MAY 24 2017
CLERK, U.S. DISTRICT COURT
RICHMOND, VA

UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF VIRGINIA

FRANK BETZ ASSOCIATES, INC.,

Plaintiff,

v.

CIVIL ACTION FILE NO.: 3:17CV323

HAMLET HOMES CORPORATION

Defendant

ANSWER OF DEFENDANT

NOW COMES the Defendant Hamlet Homes Corporation and file this their Answer to the Plaintiff's Complaint as follows:

1. Defendant is without knowledge and therefore denied..

2. Admitted that Defendant HAMLET HOMES, Corp.., is a Virginia corporation whose principal place of business currently is as stated.

3. Admitted that the Complaint in the above-captioned proceeding purports to state a claim for copyright infringement. Except as specifically admitted herein, the allegations contained in Paragraph 3 of the Complaint are denied.

4. Admitted that this Court has exclusive subject matter jurisdiction over the copyright claim asserted in the Complaint. Except as specifically admitted herein, the allegations contained in paragraph 4 of the Complaint are denied.

. 5. Admitted that Hamlet Homes is subject to personal jurisdiction in this Court. Except as specifically admitted herein, the allegations contained in paragraph 5 of the Complaint are denied.

6. Admitted that this Court is the proper venue for resolution of this dispute. Except as specifically admitted herein, the allegations contained in paragraph 6 of the Complaint are denied.

FACTUAL BACKGROUND

7. Defendant is without information sufficient to form an opinion as to the truth or falsity of the allegations contained in paragraph 7 of the Complaint. Accordingly, those allegations are denied.

8. Defendant is without information sufficient to form an opinion as to the truth or falsity of the allegations contained in paragraph 8 of the Complaint. Accordingly, those allegations are denied.

9. Defendant is without information sufficient to form an opinion as to the truth or falsity of the allegations contained in paragraph 9 of the Complaint. Accordingly, those allegations are denied.

10. Defendant is without information sufficient to form an opinion as to the truth or falsity of the allegations contained in paragraph 10 of the Complaint. Accordingly, those allegations are denied.

11. Defendant is without information sufficient to form an opinion as to the truth or falsity of the allegations contained in paragraph 11 of the Complaint. Accordingly, those allegations are denied.

12. Defendant is without information sufficient to form an opinion as to the truth or falsity of the allegations contained in paragraph 12 of the Complaint. Accordingly, those allegations are denied.

13. Defendant is without information sufficient to form an opinion as to the truth or falsity of the allegations contained in paragraph 13 of the Complaint. Accordingly, those allegations are denied.

14. Defendant admits only that Plaintiff purports to attach copyright registrations. Without knowledge as to the authenticity of the documents attached as Exhibit A, Defendant is without information sufficient to form an opinion as to the truth or falsity of the allegations contained in paragraph 14 of the Complaint. Accordingly, those allegations are denied.

15. Defendant is without information sufficient to form an opinion as to the truth or falsity of the allegations contained in paragraph 15 of the Complaint. Accordingly, those allegations are denied.

16. Defendant is without information sufficient to form an opinion as to the truth or falsity of the allegations contained in paragraph 16 of the Complaint. Accordingly, those allegations are denied.

17. Defendant is without information sufficient to form an opinion as to the truth or falsity of the allegations contained in paragraph 17 of the Complaint. Accordingly, those allegations are denied.

18. Defendant is without information sufficient to form an opinion as to the truth or falsity of the allegations contained in paragraph 18 of the Complaint. Accordingly, those allegations are denied.

19. Defendant denies it is in the business of building through traditional print media, electronic media, and the world wide web. Defendant denies it is in the business of constructing through traditional print media, electronic media, and the world wide web. Defendant denies it is in the business of selling through traditional print media, electronic media, and the world wide web. Defendant admits to marketing and advertising through traditional print media, electronic media, and the world wide web.

20. Defendant denies it has published, distributed, marketed, sold, and/or advertised architectual designs, including floor plans and exterior elevations, for single family residential homes. Defendant admits to have built, constructed, marketed, advertised, and sold homes constructed using those architectural designs with the following plan names: Chandler, Catalina, Malibu, and Westport.

21. Defendant admits to the model names. All other allegations contained in paragraph 21 are denied.

22. Defendant is without information sufficient to form an opinion as to the truth or falsity of the allegations contained in paragraph 22 of the Complaint. Accordingly, those allegations are denied.

23. Defendant is without information sufficient to form an opinion as to the truth or falsity of the allegations contained in paragraph 23 of the Complaint. Accordingly, those allegations are denied.

24. Denied.

25. Defendant is without information sufficient to form an opinion as to the truth or falsity of the allegations contained in paragraph 25 of the Complaint. Accordingly, those allegations are denied.

26. Defendant is without sufficient information or knowledge that "Betz has never authorized, consented to, or otherwise agreed to allow Hamlet to copy, distribute, or otherwise exercise any copyrights in any of the Betz Designs". Accordingly those allegations are denied.

27. Denied.

28. Denied.

COUNT I

29. Allegations are denied.

30. Defendant is without information sufficient to form an opinion as to the truth or falsity of the allegations contained in paragraph 30 of the Complaint. Accordingly, those allegations are denied.

31. Defendant is without information sufficient to form an opinion as to the truth or falsity of the allegations contained in paragraph 31 of the Complaint. Accordingly, those allegations are denied.

32. Defendant is without information sufficient to form an opinion as to the truth or falsity of the allegations contained in paragraph 32 of the Complaint. Accordingly, those allegations are denied.

33. Denied.

34. Denied.

35. Defendant is without sufficient information or knowledge that "Betz has never authorized Hamlet, by license or otherwise, to copy, reproduce, or otherwise exercise any copyrights concerning, the Betz Designs" . Accordingly those allegations are denied.

36. Denied.

37. Denied.

GENERAL DENIAL

All allegations in the Complaint not specifically admitted above are hereby DENIED

AFFIRMATIVE DEFENSES

Having answered each of the enumerated paragraphs listed in the Complaint, Tino presents the following affirmative defenses:

FIRST DEFENSE

Plaintiff has failed to state a claim upon which relief may be granted, and therefore the Complaint must be dismissed pursuant to Rule 12(b)(6) of the Federal Rules of Civil Procedure.

SECOND DEFENSE

Defendant did not contribute to, nor is responsible for any alleged copyright infringement claim, and should be held harmless. The construction plans in reference were purchased by Defendant from other companies, sold as "their" plans. Plaintiff claims that these are 'Frank Betz designs' and 'infringing designs'. The Defendant is not the maker of any design. The Defendant has in no way been a party to any purported copyright infringement claim. Defendant is indemnified altogether as the overall general defense of these vague and incoherent claims as sought herein. Therefore the Complaint is wholly without basis and should be dismissed.

THIRD DEFENSE

Plaintiff has failed to set forth any detail to make claim that the floorplans referenced are "Frank Betz designs" stating only that [ref P. 22 of Complaint].][quote: "Each of the Infringing Designs is substantailly similar to at least one of the Betz Designs with respect to, for example and without limitation, the shape, size, coordination, and/or arrangement of the interior and exterior features ans paces, and/or the overall selection, coordination, and/or arrangment of the same which are original to Betz"] endquote. Exibit A contained alleged copyright certificates with no stamped home plans attached.

FOURTH DEFENSE

The Defendant has no knowledge, nor expectation of knowledge, that home plans sold to them by any Architectural firm would be comparable to plans sold by any other Architectural firm, including but not limited to the Plaintiff. Plaintiff has not shown these to be Frank Betz designs. They are not identified as Frank Betz plans. Defendants plans are identified as plans of either Drafting and Design, or Planshop ("the Plan companies") on the construction plans. Plaintiff has not established cause for infringement. Therefore this case should be dismissed.

FIFTH DEFENSE

The Defendant has no responsibility, nor expectation of responsibility, for home plans sold to them by any Architectural firm. Defendant is not associated with the Plan companies owners or employees. Defendant has provided Plaintiff with copies of the floorplans which are identified as being produced and sold to the Defendant from the Plan companies. Further, Defendant has shared information as to the time and purchase price of Home Plans including these 4 plans purchased before 2005. The Plaintiff may not assign blame to Defendant for any perceived infringments of these plans.. Therefore this Complaint should be dismissed.

SIXTH DEFENSE

Defendant has at all times acted in good faith. Defendant does purchase construction home plans from Plan companies for the models it has built over the years, since 1996.

SEVENTH DEFENSE

Defendant does not distribute or market detailed Architectural plans (i.e. construction plans). Defendant has never willfully distributed, marketed, copied, built nor sold a home in any way identified as a Frank Betz plan. (Defendant has purchased a Frank Betz plan in 2013, and paid the full license cost. The Gadsen model. The plan has not yet been built, and has not been advertised, though Defendant has the ability to freely do so, as does Defendant with each of the purchased home plans for Hamlet Homes.)

EIGHTH DEFENSE

The Plaintiff has offered no Exibits as to what is being claimed as 'infringing' of the Defendants plans. Plaintiff attached copies of the Plaintiff Frank Betz Associates planbook plan renderings and copies of the Defendant Hamlet Homes plan renderings. There being no specific references, nor notations as to any item deemed 'infringing'.

a. The Planshop plan, Mike Calvin architect (Westport model) has a copyright date on the blueprints of 1998. // The Plaintiff alleges this plan to be an infringement of their Frank Betz plan, (Bradbury) yet the Certificate of Registration for their plan (Bradbury) is dated Sept, 7th, 2000.

b. The Planshop plan, Mike Calvin architect (Chandler model) has a copyright date on the blueprints of 1998. // The Plaintiff alleges this plan to be an infringement of their Frank Betz plan, (Tate) yet the Certificate of Registration for that plan is dated April 11th, 2000.

So as to turn the tables on questions of Copyright infringement, or so it would seem.

NINTH DEFENSE

Defendant asserts that Plaintiff's 'claim' is vague, ambiguous, and lacking any specific points to support any claim of copyright infringement. Plaintiff has not alleged facts sufficient to identify any claim. Therefore the Complaint should be dismissed.

TENTH DEFENSE

Any similarites (which are not identified by the Plaintiff) of these standard floorplans containing all standard elements of buildings are not protectable as the purported copyright plans lack originality of protectable elements (of which there are none identified) to be infringed upon as required by the Copyright Act. Therefore this Complaint should be dismissed.

ELEVENTH DEFENSE

Plaintiff has not been injured in any manner as a result of any act of the Defendant.

TWELFTH DEFENSE

Plaintiff sent a letter "Re: Copyright Infringement of Home Plans..." on March 20th 2017 to the attention of the Defendant, Hamlet Homes salesperson – Attn: Dave Fox, an independant contractor. "Dear Mr. Fox:"... Plaintiff further sent the letter to a sales office address. Plaintiff did not approprately and properly research the Hamlet Homes Corporation to identify to whom to direct the letter. Plaintiff, or Plaintiffs representative, did not perform due diligence. Defendant did not receive proper notification.

THIRTEENTH DEFENSE

Defendant alleges that all of the Plaintiffs unspecified claims, or purportedly specified, claims are further barred by the Discovery Rule. The Defendant has had a website since 2006.

FOURTEENTH DEFENSE

Any relief sought by the Plaintiff is barred by the doctrine of unclean hands, and its own inequitable conduct. Therefore this case should be dismissed.

FIFTEENTH DEFENSE

Any allegations contained in the Plaintiff's Complaint that are not admitted, denied or otherwise responded to above are hereby specifically denied.

WHEREFORE, this defendant prays:

a. That the Plaintiff's Complaint be dismissed.

b. That Plaintiff have and take nothing of its Complaint.

c. That Defendant recover its attorney's fees (if incurred),

d. That the Court grant such other and further relief as it may in its discretion deem just and equitable. .

This 24th day of May, 2017.

Respectfully submitted,

signed by Frank J. Dubois, president
Hamlet Homes Corporation

company is representing self & not with an attorney

V. Lisa Rush Smits, ceo, prepared document
Hamlet Homes Corp
209 Monroe Bay Ave
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540-891-8900

CERTIFICATE OF SERVICE

This is to certify that I have this day electronically filed the foregoing **Answer** with the Clerk of Court using the CM/ECF system and served upon counsel of record by electronic filing, as follows: CIVIL ACTION FILE NO.: 3:17CV323

Dated: May 21st, 2017

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